

U.S. Patent Appl. No. 09/725,178—Mockel *et al.*

II. REMARKS

Preliminary Remarks

Based upon the foregoing amendment and following remarks, reconsideration and allowance of the present application are respectfully requested. Claims 1, 5-7, 21-23, and 27-33 are currently pending in the application. Claims 5, 7, 21, 30 and 33 are allowed. Claims 1, 6, 22, 23, 27-29, 31, and 32 remain at issue.

On page 2 of the official action, the examiner objected to the phrase "identical to the amino acid sequence." As discussed below, claims 1 and 27 have been canceled without prejudice and accordingly, the objection to these claims is moot. In view of the foregoing amendment, the applicants respectfully submit withdrawal of the objection.

The applicants further submit that claims 5, 7, 22, 23, 28, 29-33 are directed to an allowable DNA product along with vectors and host cells harboring these DNA products. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), the applicants request that new claim 34, which is directed to a method for production of L-amino acids using coryneform bacteria based off of the originally filed process claims 8-20, be now rejoined (see restriction requirement of January 28, 2002).

Specifically, new claim 34 is directed to a method for the production of L-amino acids using coryneform bacteria comprising: (a) fermenting a coryneform bacterial strain comprising an overexpressed *gpm* polynucleotide having a nucleotide sequence according to claims 5 or 7 wherein said overexpression is achieved by increasing the copy number of said polynucleotide or by operably linking said polynucleotide to a promoter; (b) concentrating the fermentation broth to eliminate water and increase the concentration of said L-amino acid and coryneform bacterial strain in the broth; and (c) isolating the L-amino acid. Support for new claim 34 can be found throughout the specification, for example, on page 13, lines 27-32, Example 5, and page 10, lines 8-28. The applicants that new process claim 34 includes all the limitations of the allowed product claims. Thus, in accordance with 37 C.F.R. §1.104, the applicants respectfully request that process claim 34 be joined with claims 5, 7, 21-23, and 28-33.

This response is timely filed as it is accompanied by a petition for an extension of time to file in the first month and the requisite fee. Should the Patent Office determine that additional fees are required for consideration of this response, permission is hereby granted to charge such fees to Deposit Account No. 033975.

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The applicants request entry of the foregoing amendment, as it will place the application in condition for allowance. The applicants do not intend by these or any amendments to abandon subject matter of the claims as originally filed or later presented, and reserve the right to pursue such subject matter in continuing applications.

Patentability Remarks

Rejection Pursuant to 35 U.S.C. §102(e)

On pages 2 and 3 of the official action, the examiner rejected claims 1, 6, 22, 23, 27, 28, 29, 31, and 32 under 35 U.S.C. §102(e) as being anticipated by Pompejus *et al.*, U.S. Patent Application Publication No. US2004/0180408 (hereafter "Pompejus"). Specifically, the examiner alleged that Pompejus teaches an isolated polynucleotide encoding the polypeptide having the amino acid sequence corresponding to RXA02492, which is at least 95% identical to the amino acid sequence of SEQ ID NO: 2 of the present application. The examiner also asserted that the polypeptide is taught to have phosphoglycerate mutase activity as well as vectors and host cells comprising said polynucleotide.

Solely to expedite prosecution and without prejudice to the applicants right to seek broader claims in a continuing application, claims 1, 6, and 27 have been canceled without prejudice. Amended claim 22 is directed to a member of the coryneform group of bacteria transformed by the polynucleotide according to one of claims 5 or 7. Amended claim 28 is directed to a vector comprising the polynucleotide of claims 5 or 7. In view of the foregoing amendment, the applicants respectfully submit that the rejection of claims 1, 6, 22, 23, 27, 28, 29, 31, and 32 under 35 U.S.C. §102(e) under Pompejus is moot and should be withdrawn.

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III. CONCLUSION

In view of the foregoing, all pending claims are now believed to be in form of allowance, and such action is hereby solicited. If any point remains at issue which the examiner feels may be best resolved through a personal or telephone interview, please contact the undersigned at the telephone number below.

Respectfully submitted,

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